



100-18

PATENT
Customer No. 22,852
Attorney Docket No. 5725.0795-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Roberto CAVAZZUTI et al.)
Application No.: 10/787,441) Group Art Unit: 1615
Filed: February 27, 2004) Examiner: J. Venkat
For: METHOD OF MAKING UP EYELASHES)
USING A MASCARA COMPOSITION) Confirmation No.: 1299
COMPRISING AT LEAST ONE)
POLYAMIDE POLYMER AND AT LEAST) APPLICATION MADE SPECIAL
ONE SOLID SUBSTANCE HAVING A)
MELTING POINT OF 45°C OR)
GREATER (AS AMENDED))

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed documents are attached, excluding any U.S. Patents, U.S. Patent Application Publications, and co-pending U.S. Patent Applications which are available in the Image File Wrapper System.

2005 HAL111 00000125 10787441 180.00 OF

With respect to the foreign language documents, the following applies:

1. **DE 197 26 184 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith.
2. **DE 197 55 649 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 6,159,455, which is listed herewith.
3. **DE 198 55 649 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 6,545,174, which is listed herewith.
4. **EP 0 507 692 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,252,323, which is listed herewith.
5. **EP 0 518 772 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,795,565, which is listed herewith.
6. **EP 0 518 773 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,695,747, which is listed herewith.
7. **EP 0 669 323 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,585,091, which is listed herewith.

8. **EP 0 775 698 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 6,955,060, which is listed herewith.
9. **EP 0 790 243 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,849,909, which is listed herewith.
10. **EP 0 863 145 A2** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,976,512, which is listed herewith.
11. **EP 0 878 469 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 5,962,452, which is listed herewith.
12. **EP 0 967 200 A1** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 6,093,385, which is listed herewith.
13. **FR 2 315 991** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to British Patent No. 1,539,625, which is listed herewith.
14. **FR 2 416 008** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith. The document is believed to be related to U.S. Patent No. 4,247,411, which is listed herewith.
15. **FR 2 796 550** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith.

16. **WO 93/04665** - An abstract of the disclosure of this document can be found in the English language Derwent Abstract submitted herewith.

17. **WO 98/25922** - An English language Abstract of this document can be found on the front of this document, as well as the English language Derwent Abstract submitted herewith. This document is believed to be related to U.S. Patent No. 6,361,764 and U.S. Application Publication No. US 2002/0010179 A1, which are listed herewith.

Further to the Notification of Pending Litigation filed July 23, 2004, Applicants submit two additional documents from the on-going litigation *L'Oreal S.A., et al. v. Estee Lauder Companies, Inc., et al.*, Civil Action No. 04-1660 (D.N.J.). The first document is a copy of Estee Lauder's Amended Answer and Counterclaims. The second document is a copy of Estee Lauder's Response to Plaintiff's Third Set of Interrogatories (Nos. 8-13). Both of these documents are enclosed with this Supplemental Information Disclosure Statement and listed on the IDS Form PTO/SB/08.

As explained in Applicants' September 17, 2004, Information Disclosure Statement, the United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicants are not representing that the office actions in the co-pending applications are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed substantive

office actions from co-pending applications on the attached IDS Form PTO/SB/08 and have enclosed copies of the documents as well. At the Office's request, Applicants have not included copies of those Office Actions issued in the co-pending applications by the present Examiner of this application.

Applicants respectfully request that the Office consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Office applies any of the documents as prior art against any claims in the application and Applicants determine that the cited documents do not constitute "prior art" under United States law, Applicants reserve the right to present to the Office the relevant facts and law regarding the appropriate status of such documents.

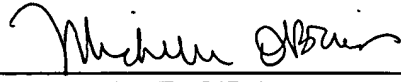
Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please
charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 7, 2005

By: 
Michelle E. O'Brien
Reg. No. 46,203

Complete if Known

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet	1	of	4	Application Number	10/787,441
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Filing Date	February 27, 2004
First Named Inventor	Roberto CAVAZZUTI et al.
Art Unit	1615
Examiner Name	J. Venkat
Attorney Docket Number	05725.0795-02000

U.S. PATENTS AND PUBLISHED U.S. PATENT APPLICATIONS

Examiner Initials	Cite No.	Document Number	Issue or Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code (if known)			
		4,148,875	4/10/1979	Barnett et al.	
		4,247,411	1/27/1981	Vanlerberghe et al.	
		4,367,390	1/4/1983	Balleys et al.	
		4,724,137	2/9/1988	Hoppe et al.	
		4,822,601	4/18/1989	Goode et al.	
		5,166,355	11/24/1992	Leistner et al.	
		5,237,071	8/17/1993	Leistner et al.	
		5,252,323	10/12/1993	Richard et al.	
		5,290,555	3/1/1994	Guthauser et al.	
		5,585,091	12/17/1996	Pelzer et al.	
		5,605,651	2/25/1997	Balzer	
		5,695,747	12/9/1997	Forestier et al.	
		5,702,519	12/30/1997	Nitta et al.	
		5,795,565	8/18/1998	Eteve et al.	
		5,849,909	12/15/1998	Richard et al.	
		5,955,060	9/21/1999	Huglin et al.	
		5,962,452	10/5/1999	Haase et al.	
		5,976,512	11/2/1999	Huber	
		5,993,787	11/30/1999	Sun et al.	
		6,093,385	7/25/2000	Habeck et al.	
		6,132,745 A	10/17/2000	Marchi-lemann et al.	
		6,159,455	12/12/2000	Habeck et al.	
		6,214,326	4/10/2001	Dupuis	
		6,361,764	3/26/2002	Richard et al.	
		6,428,773 B1	8/6/2002	Oko et al.	
		6,447,759 B2	9/10/2002	Noguchi et al.	
		6,506,716	1/14/2003	Delplancke et al.	
		6,545,174	4/8/2003	Habeck et al.	
		6,552,160 B2	4/22/2003	Pavlin, Mark S.	
Examiner Signature				Date Considered	

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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STATEMENT BY APPLICANT**

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Sheet	2	of	4	Application Number	10/787,441
				Filing Date	February 27, 2004
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				Art Unit	1615
				Examiner Name	J. Venkat
				Attorney Docket Number	05725.0795-02000

U.S. PATENTS AND PUBLISHED U.S. PATENT APPLICATIONS

		6,761,881 B2	7/13/2004	Bara	
		6,875,245 B2	4/5/2005	Pavlin, Mark S.	
		US 2002/0010179 A1	1/24/2002	Richard et al.	

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No.	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	Translation
		Country Code Number Kind Code (if known)				
		DE 197 26 184 A1	12/24/1998	Gers-Barlag		Abstract
		DE 197 55 649 A1	6/17/1999	Thorsten Habeck et al.		Abstract
		DE 198 55 649 A1	6/8/2000	Thorsten Habeck et al.		Abstract
		EP 0 507 692 A1	10/7/1992	Herve Richard et al.		Abstract
		EP 0 517 104 B1	11/24/1993	Giuseppe Raspanti		English
		EP 0 518 772 A1	12/16/1992	Martine Eteve et al.		Abstract
		EP 0 518 773 A1	12/16/1992	Serge Forestier et al.		Abstract
		EP 0 570 838 B1	8/11/1999	Giuseppe Raspanti		English
		EP 0 669 323 A1	8/30/1995	Dr Ralf Pelzer et al.		Abstract
		EP 0 775 698 A1	5/28/1997	Dietmar Huglin et al.		Abstract
		EP 0 790 243 A1	8/20/1997	Herve Richard et al.		Abstract
		EP 0 796 851 A1	9/24/1997	Gluseppe Raspanti		english
		EP 0 863 145 A2	9/9/1998	Ulrich Huber		Abstract
		EP 0 878 469 A1	11/18/1998	Jurg Haase et al.		Abstract
		EP 0 893 119 B1	1/27/1999	Helmut Luther		English
		EP 0 933 376 A2	8/4/1999	Ulrich Huber		English
		EP 0 967 200 A1	12/29/1999	Dr. Thorsten Habeck et al		Abstract
		EP 1 044 676 A2	10/18/2000	Hiroji Ishii et al.		English Abstract
		FR 2 315 991	1/28/1977	Guy Vanlerberghe et al.		Abstract
		FR 2 416 008	8/31/1979	Guy Vanlergerghe et al.		Abstract
		FR 2 796 550	1/26/2001	Laurent Dencausse et al.		Abstract
		GB 1 539 625	1/31/1979	Guy VANLERBERGHE et al.		

Examiner Signature		Date Considered	
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(Use as many sheets as necessary)

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Sheet	3	of	4	Application Number	10/787,441
				Filing Date	February 27, 2004
				First Named Inventor	Roberto CAVAZZUTI et al.
				Art Unit	1615
				Examiner Name	J. Venkat
				Attorney Docket Number	05725.0795-02000

FOREIGN PATENT DOCUMENTS

		WO 05/013887 A2	2/17/2005	Xiang Shao LU et al		English
		WO 93/04665	3/18/1993	Serge Forestier et al.		English Abstract
		WO 98/25922	6/18/1998	Herve Richard et al.		English Abstract

NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	Translation
		Bangham, A.D. et al. Diffusion of Univalent Ions across the Lamellae of Swollen Phospholipids, Journal of Molecular Biology, pp. 238-252, Vol. 13, August to October 1965	
		Co-Pending Application No. 10/494,864; Attorney Docket No. 06028.0047-00 Title: COMPOSITION CONTAINING AN AMINO ACID N-ACYLATED ESTER AND A POLYAMIDE-STRUCTURED UV FILTER U.S. Filing Date: November 23, 2004	
		English language DERWENT abstract of DE 197 26 184	
		English language DERWENT abstract of DE 197 55 649 A1	
		English language DERWENT abstract of DE 198 55 649 A1	
		English language DERWENT abstract of EP 0 507 692 A1	
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		English language DERWENT abstract of FR 2 315 991	
		English language DERWENT abstract of FR 2 416 008	
		English language DERWENT abstract of FR 2 796 550	
		English language DERWENT abstract of WO 93/04665	
		English language DERWENT abstract of WO 98/25922	
		Estee Lauder's Amended Answer and Counterclaims, dated April 21, 2005, in the on-going litigation L'Oreal S.A., et al., v. The Estee Lauder Companies Inc., et al., Civil Action No. 04-1660 (D.N.J.)	

Examiner Signature		Date Considered	
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Sheet	4	of	4	Application Number	10/787,441
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				First Named Inventor	Roberto CAVAZZUTI et al.
				Art Unit	1615
				Examiner Name	J. Venkat
				Attorney Docket Number	05725.0795-02000

NON PATENT LITERATURE DOCUMENTS

		Estee Lauder's Response to Plaintiff's Third Set of Interrogatories (Nos. 8-13), dated June 21, 2005, in the on-going litigation L'Oreal S.A., et al. v. The Estee Lauder Companies Inc., et al., Civil Action No. 04-1660 (D.N.J.)	
		International Search Report in PCT/US03/41618 (Atty. Docket No. 05725.1338-00304), dated March 11, 2005	
		International Search Report in PCT/US04/01071 (Atty. Docket No. 5725.1335-00304), dated February 22, 2005	
		Office Action in co-pending Application No. 09/733,898 (Attorney Docket No. 05725.0808) dated April 25, 2005 (Ex. Yoon)	
		Office Action in co-pending Application No. 09/733,899 (Attorney Docket No. 05725.0594) dated May 3, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 09/733,900 (Attorney Docket No. 05725.0595-00), dated June 2, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 09/749,036 (Attorney Docket No. 05725.0832-00) dated April 29, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/012,052 (Attorney Docket No. 05725.1005-00), dated June 3, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/182,830 (Attorney Docket No. 05725.0795-01) dated April 4, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/203,254 (Attorney Docket No. 05725.0817-01) dated April 22, 2005 (Ex. Berko)	
		Office Action in co-pending Application No. 10/203,375 (Attorney Docket No. 06028.0018-00), dated May 13, 2005 (Ex. Punnose)	
		Office Action in co-pending Application No. 10/312,083 (Attorney Docket No. 05715.1187) dated April 18, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/699,780 (Attorney Docket No. 05725.0895-02), dated June 15, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/746,612 (Attorney Docket No. 05725.1338-01) dated June 15, 2005 (Ex. Venkat)	
		Office Action in co-pending Application No. 10/787,441, (Attorney Docket No. 05725.0795-02) dated April 5, 2005 (Ex. Venkat)	
		Richard J. Lewis, Sr., "Ricinoleic Acid," Hawley's Condensed Chemical Dictionary 927 (13th. 1997)	

Examiner Signature		Date Considered	
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EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.